

# Telecommunications Act

1993, c. 38

T-3.4

[Assented to June 23rd, 1993]

An Act respecting telecommunications

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## SHORT TITLE

*Short title*

1. This Act may be cited as the Telecommunications Act.

## PART I GENERAL Interpretation

*Definitions*

2. (1) In this Act, "broadcasting undertaking"  
«*entreprise de radiodiffusion* »

"broadcasting undertaking" has the same meaning as in subsection 2(1) of the Broadcasting Act;

"Canadian carrier"  
«*entreprise canadienne* »

"Canadian carrier" means a telecommunications common carrier that is subject to the legislative authority of Parliament;

"Canadian telecommunications policy objectives" «*Version anglaise seulement* »

"Canadian telecommunications policy objectives" means the objectives set out in section 7;

"charge" «*Version anglaise seulement* »

"charge" includes to receive in payment;

"Commission"  
«*Conseil* »

"Commission" means the Canadian Radio-television and Telecommunications Commission;

"control"  
«*contrôle* »

"control" means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of any body corporate or otherwise;

"decision"  
«*decision* »

"decision" includes a determination made by the Commission in any form;

"exempt transmission apparatus"  
«*appareil de transmission exclu* »

"exempt transmission apparatus" means any apparatus whose functions are limited to one or more of the following:

(a) the switching of telecommunications,

(b) the input, capture, storage, organization, modification, retrieval, output or other processing of intelligence, or

(c) control of the speed, code, protocol, content, format, routing or similar aspects of the transmission of intelligence;

"intelligence"  
«*information* »

"intelligence" means signs, signals, writing, images, sounds or intelligence of any nature;

"international submarine cable"  
«*cable sous-marin international* »

"international submarine cable" means a submarine telecommunications line that extends between Canada and any place outside Canada, or between places outside Canada through Canada, other than a line situated entirely under fresh water;

"international submarine cable licence"

«*licence de cable sous-marin international* »

"international submarine cable licence" means a licence issued under section 19;

"Minister"  
«*ministre* »

"Minister" means the Minister of Industry;

"person"  
«*personne* »

"person" includes any individual, partnership, body corporate, unincorporated organization, government, government agency and any other person or entity that acts in the name of or for the benefit of another, including a trustee, executor, administrator, liquidator of the succession, guardian, curator or tutor;

"prescribed" «*Version anglaise seulement* »  
"prescribed" means prescribed by regulation;

"public authority"  
«*administration publique* »

"public authority" includes Her Majesty in right of Canada or a province;

"rate"  
«*tarif* »

"rate" means an amount of money or other consideration and includes zero consideration;

"special Act"  
«*loi speciale* »

"special Act" means an Act of Parliament respecting the operations of a particular Canadian carrier;

"telecommunications"  
«*telecommunication* »

"telecommunications" means the emission, transmission or reception of intelligence by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

"telecommunications common carrier"  
«*entreprise de telecommunication* »

"telecommunications common carrier" means a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation;

"telecommunications facility"  
«*installation de telecommunication* »

"telecommunications facility" means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility;

"telecommunications service"  
«*service de telecommunication* »

"telecommunications service" means a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise;

"telecommunications service provider"  
«*fournisseur de services de telecommunication* »

"telecommunications service provider" means a person who provides basic telecommunications services, including by exempt transmission apparatus;

"transmission facility"  
«*installation de transmission* »

"transmission facility" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus.

*Definition of "network termination point"*

(2) The Commission may define the expression "network termination point" for purposes of the definition "transmission facility" in subsection (1).

1993, c. 38, s. 2; 1995, c. 1, s. 62; 1998, c. 8, s. 1; 2004, c. 25, s. 174.

### **Her Majesty**

*Act binding on Her Majesty*

3. This Act is binding on Her Majesty in right of Canada or a province.

### **Application**

*Broadcasting excluded*

4. This Act does not apply in respect of broadcasting by a broadcasting undertaking.

*Application*

5. A trustee, trustee in bankruptcy, receiver, sequestrator, manager, administrator of the property of another or any other person who, under the authority of any court, or any legal instrument or act, operates any transmission facility of a Canadian carrier is subject to this Act.

1993, c. 38, s. 5; 2004, c. 25, s. 175.

*Special Acts*

6. The provisions of this Act prevail over the provisions of any special Act to the extent that they are inconsistent.

## **Canadian Telecommunications Policy**

*Objectives*

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;
- (d) to promote the ownership and control of Canadian carriers by Canadians;
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
- (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;
- (h) to respond to the economic and social requirements of users of telecommunications services; and
- (i) to contribute to the protection of the privacy of persons.

### **Powers of Governor in Council, Commission and Minister**

#### *Directions*

8. The Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives.

#### *Exemptions*

9. (1) The Commission may, by order, exempt any class of Canadian carriers from the application of this Act, subject to any conditions contained in the order, where the Commission, after holding a public hearing in relation to the exemption, is satisfied that the exemption is consistent with the Canadian telecommunications policy objectives.

#### *Inquiry and determination*

(2) The Commission may, on application by any interested person or on its own motion, inquire into and determine whether any condition of an exemption order has been complied with.  
Interested persons

(3) The decision of the Commission that a person is or is not an interested person is binding and conclusive.

1993, c. 38, s. 9; 1999, c. 31, s. 196(F).

#### *Publication of proposed order*

10. (1) The Minister shall have an order proposed to be made under section 8 published in the Canada Gazette and laid before each House of Parliament, and a reasonable opportunity shall be

given to interested persons to make representations to the Minister with respect to the proposed order.

#### *Consultation*

(2) The Minister shall consult the Commission with respect to an order proposed to be made under section 8 before it is published or laid under this section and shall consult the Commission again with respect to the order in its definitive form before it is made.

#### *Transmittal and tabling of exemption orders*

(3) The Commission shall send to the Minister an order proposed to be made under section 9 and the Minister shall have the order laid before each House of Parliament.

#### *Reference to committees*

(4) A proposed order laid before a House of Parliament stands referred to such committee as is designated by order of that House to receive such orders.

#### *Modification after publication*

(5) A proposed order that is modified after publication need not be published again under subsection (1).

#### *Making of order*

(6) After the fortieth sitting day of Parliament following the first day on which a proposed order has been laid before both Houses, the Governor in Council or the Commission, as the case may be, may make the order either as proposed or with any modifications the Governor in Council or the Commission considers advisable.

#### *Tabling of orders*

(7) After an order is made under section 8, the Minister shall have it laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the order is made.

#### *Transmittal and tabling of exemption orders*

(8) After an order is made under section 9, the Commission shall immediately send it to the Minister who shall have it laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the order is sent.

#### *Meaning of "sitting day"*

(9) For the purposes of this section, a "sitting day" is a day on which either House of Parliament is sitting.

#### *Effect of order*

11. (1) An order made under section 8 is binding on the Commission beginning on the day on which the order comes into force.

### *Pending matters*

(2) Subject to subsection (3), an order made under section 8 shall, if it so provides, apply in respect of matters pending before the Commission on the day on which the order comes into force.

### *Idem*

(3) An order made under section 8 does not apply in respect of a matter pending before the Commission on the day on which the order comes into force if

(a) final submissions have been filed in respect of that matter; and

(b) less than one year has expired since the period for filing final submissions ended.

### *Variation, rescission or referral*

12. (1) Within one year after a decision by the Commission, the Governor in Council may, on petition in writing presented to the Governor in Council within ninety days after the decision, or on the Governor in Council's own motion, by order, vary or rescind the decision or refer it back to the Commission for reconsideration of all or a portion of it.

### *Copy of petition to Commission*

(2) A person who presents a petition to the Governor in Council shall, at the same time, send a copy of the petition to the Commission.

### *Copies to other parties*

(3) On receipt of a petition, the Commission shall send a copy of it to each person who made any oral representation to the Commission in relation to the decision that is the subject of the petition.

### *Notice of petition*

(4) On receipt of a petition, the Minister shall publish in the Canada Gazette a notice of its receipt indicating where the petition and any petition or submission made in response to it may be inspected and copies of them obtained.

### *Order for reference back*

(5) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing

(a) shall set out the details of any matter that the Governor in Council considers to be material to the reconsideration; and

(b) may specify a date before which the Commission shall complete its reconsideration.

### *Reconsideration*

(6) The Commission shall, before any date specified under paragraph (5)(b), reconsider a decision referred back to it under subsection (1) and may confirm, vary or rescind the decision.

### *Variation or rescission by Governor in Council*

(7) Where the Commission confirms or varies a decision under subsection (6) or does not complete its reconsideration of the decision before any date specified under paragraph (5)(b), the Governor in Council may, by order, vary or rescind the decision within ninety days after the confirmation or variation of the decision or the specified date, as the case may be.

### *Reasons*

(8) In an order made under subsection (1) or (7), the Governor in Council shall set out the reasons for making the order.

### *Provincial consultation*

13. The Minister, before making a recommendation to the Governor in Council for the purposes of any order under section 8 or 12, or before making any order under section 15, shall notify a minister designated by the government of each province of the Minister's intention to make the recommendation or the order and shall provide an opportunity for each of them to consult with the Minister.

### *Report*

14. The Governor in Council may require the Commission to make a report on any matter within the Commission's jurisdiction under this Act or any special Act.

### *Technical standards*

15. (1) The Minister may, where the Minister is satisfied that to do so will further the Canadian telecommunications policy objectives, by order made after consultation with the Commission, establish standards in respect of the technical aspects of telecommunications and require the Commission to give effect to them.

### *Incorporation by reference*

(2) An order that incorporates a standard by reference may incorporate it as amended from time to time.

### *Publication of proposed orders*

(3) Any order proposed to be made under this section shall be published in the Canada Gazette at least sixty days before its proposed effective date, and a reasonable opportunity shall be given to interested persons to make representations to the Minister with respect to the proposed order.

### *Modification after publication*

(4) A proposed order that is modified after publication need not be published again under subsection (3).

## **PART II**

### **ELIGIBILITY TO OPERATE**

## Canadian Ownership and Control

### *Eligibility*

16. (1) A Canadian carrier is eligible to operate as a telecommunications common carrier if it is a Canadian-owned and controlled corporation incorporated or continued under the laws of Canada or a province.

### *Established carriers*

(2) A Canadian carrier other than a corporation described in subsection (1) is eligible to operate as a telecommunications common carrier if it is a corporation incorporated or continued under the laws of Canada or a province and the following conditions are met:

(a) the corporation was acting, or is a successor to a person that was acting, as a telecommunications common carrier in Canada on July 22, 1987, whether or not the telecommunications operations of the corporation or the person it succeeded were regulated under any Act of Parliament on that day;

(b) the telecommunications operations on July 22, 1987 of the corporation or the person it succeeded have been continued substantially without interruption since that day by that person, if any, and the corporation;

(c) the corporation and the person it succeeded, if any, satisfied the prescribed criteria respecting continuous ownership and control by Canadians since July 22, 1987; and

(d) the corporation and the person it succeeded, if any, have operated as a telecommunications common carrier only in the territory in which the corporation or that person operated as such on July 22, 1987, or in such greater territory and in such manner as is specified by the Minister.

### *Canadian ownership and control*

(3) For the purposes of subsection (1), a corporation is Canadian-owned and controlled if

(a) not less than eighty per cent of the members of the board of directors of the corporation are individual Canadians;

(b) Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than eighty per cent of the corporation's voting shares issued and outstanding; and

(c) the corporation is not otherwise controlled by persons that are not Canadians.

### *Prohibition*

(4) No Canadian carrier shall operate as a telecommunications common carrier unless it is eligible under this section to operate as such.

### *Exemption*

(5) Subsections (1), (2) and (4) do not apply in respect of the ownership or operation of

(a) international submarine cables; or

(b) earth stations that provide telecommunications services by means of satellites.

1993, c. 38, s. 16; 1998, c. 8, s. 2.

## **International Telecommunications Services Licences**

### *Licence required — classes of telecommunications service providers*

16.1 (1) No telecommunications service provider that is of a class specified by the Commission shall provide international telecommunications services except in accordance with an international telecommunications service licence.

### *Licence required — classes of service*

(2) No telecommunications service provider shall, except in accordance with an international telecommunications service licence, provide international telecommunications services that are within a class of telecommunications services specified by the Commission.

1998, c. 8, s. 3.

### *Application*

16.2 An application for the issuance, renewal or amendment of an international telecommunications service licence must be made in the form and manner and with the information specified by the Commission, and be accompanied by the fee prescribed under subsection 68(1).

1998, c. 8, s. 3.

### *Issuance of licences*

16.3 (1) The Commission may, on application, issue an international telecommunications service licence.

### *Conditions*

- (2) The Commission may, in respect of international telecommunications services,
- (a) establish licence conditions in respect of classes of telecommunications service providers or classes of international telecommunications services; and
  - (b) include in a licence conditions that are related to the circumstances of the licensee and that the Commission considers appropriate.

### *Amendment*

(3) The Commission may, on application by any interested person or on its own motion, amend any conditions of a licence.

### *Term*

(4) The term of a licence may not exceed ten years on its issuance or renewal.

### *Renewal*

(5) A licence may be renewed on application by the licensee.

### *Transfer*

(6) A licence is not transferable except with the consent of the Commission.  
1998, c. 8, s. 3.

### *Suspension and revocation of telecommunications service licences*

16.4 (1) The Commission may suspend or revoke an international telecommunications service licence whenever the Commission believes on reasonable grounds that the licensee has contravened this Act, the regulations or any condition of the licence, but the licensee must first be given notice in writing of the reasons for the suspension or revocation and a reasonable opportunity to make representations to the Commission.

### *Consent of licensee*

(2) The Commission may suspend or revoke a licence with the consent of, or on application by, the licensee.

1998, c. 8, s. 3.

## **International Submarine Cable Licences**

### *Licence required*

17. No person shall construct or operate an international submarine cable or construct or operate any works or facilities for the purpose of operating an international submarine cable except in accordance with an international submarine cable licence that has been issued to the person and that the person remains eligible under the regulations to hold.

### *Application*

18. An application for the issuance, renewal or amendment of an international submarine cable licence must be made in the prescribed form and manner and be accompanied by the prescribed information and the prescribed fee or a fee calculated in the prescribed manner.

1993, c. 38, s. 18; 1999, c. 31, s. 197(F).

### *Issuance of licences*

19. (1) The Minister may, on application, issue an international submarine cable licence to a person who is eligible under the regulations to hold the licence.

### *Conditions*

(2) An international submarine cable licence may contain such conditions as the Minister considers are consistent with the Canadian telecommunications policy objectives.

### *Term*

(3) The term of an international submarine cable licence may not exceed ten years on issuance of the licence or on renewal.

### *Amendment, renewal and transfer*

(4) An international submarine cable licence may be amended or renewed on application by the licensee, but a licence is not transferable except with the consent of the Minister.  
1993, c. 38, s. 19; 1998, c. 8, s. 4.

### *Suspension and revocation of licences*

20. (1) The Minister may suspend or revoke an international submarine cable licence whenever the Minister believes on reasonable grounds that the licensee has ceased to be eligible under the regulations or has contravened this Act, the regulations or any condition of the licence but the licensee must first be given notice in writing of the reasons for the suspension or revocation and a reasonable opportunity to make representations to the Minister.

### *Idem*

(2) The Minister may suspend or revoke an international submarine cable licence on application made by or with the consent of the licensee.

## **Documentary Evidence**

### *Supporting affidavit*

21. The Minister may require the furnishing of an affidavit or a solemn declaration attesting to the authenticity of any document provided under this Part or the regulations, or to the truth of any fact stated in any such document or in any application submitted under this Part.

## **Regulations**

### *Regulations*

22. (1) The Governor in Council may, in relation to Canadian carriers' eligibility under section 16 to operate as telecommunications common carriers, make regulations

(a) respecting information that is to be provided, the persons by whom and to whom it is to be provided, the manner in which and the time within which it is to be provided and the consequences of failing to provide it;

(b) respecting the circumstances and the manner in which a Canadian carrier, in order to maintain its eligibility, may control the acquisition and ownership of its voting shares, restrict, suspend or refuse to recognize ownership rights in respect of those shares and require holders of those shares to dispose of them;

(c) authorizing the board of directors of a Canadian carrier to pay a dividend or to make any other distribution with respect to voting shares that would otherwise be prohibited because the shares were held in contravention of section 16 or any regulations made under this subsection where, in the board's opinion, the contravention was inadvertent or of a technical nature or it would be otherwise inequitable not to pay the dividend or make the distribution;

(d) respecting the circumstances and the manner in which a Canadian carrier may restrict voting rights attached to shares, or suspend or void the exercise of those rights, in order to maintain its eligibility;

- (e) respecting the circumstances and the manner in which a Canadian carrier may
  - (i) sell, redeem or purchase shares held contrary to section 16 or any regulations made under this subsection, and
  - (ii) deal with the proceeds of sale and reimburse any purchasers of the shares in good faith;
- (f) respecting the powers of a Canadian carrier to require disclosure of the beneficial ownership of its shares, the right of the carrier and its directors, officers and employees, and its agents or mandataries, to rely on any required disclosure and the effects of their reliance;
- (g) respecting the verification by the Commission of a Canadian carrier's eligibility, the measures the Commission may take to maintain the carrier's eligibility, including exercising the powers of the carrier's board of directors and countermanding its decisions, and the circumstances and manner in which the Commission may take those measures;
- (h) respecting the circumstances and manner in which the Commission and its members, officers or employees, or its agents or mandataries, or a Canadian carrier and its directors, officers and employees, and its agents or mandataries, may be protected from liability for actions taken by them in order to maintain the carrier's eligibility;
- (i) defining the words "successor" and "Canadian" for the purposes of section 16; and
- (j) prescribing anything that is to be prescribed and generally for carrying out the purposes and provisions of section 16 and this subsection.

### **Idem**

- (2) The Governor in Council may, in relation to international submarine cable licences, make regulations
  - (a) prescribing the procedure governing applications for licences, including the form of applications, the information to accompany them and the manner of filing, processing and disposing of them;
  - (b) respecting the form of licences and the information they must include and requiring licensees to publish or otherwise make them available for public inspection;
  - (c) prescribing classes of international submarine cable licences and determining the persons eligible to hold licences of any particular class;
  - (d) prescribing fees, or the manner of calculating fees, in respect of licences and prescribing the manner in which the fees are to be paid; and
  - (e) generally for carrying out the purposes and provisions of sections 17 to 20.

### **Liability for fees**

- (3) Fees required to be paid under this Part constitute a debt due to Her Majesty in right of Canada and may be recovered in a court of competent jurisdiction.
- Publication of proposed regulations

(4) Any regulations proposed to be made under this section shall be published in the Canada Gazette at least sixty days before their proposed effective date, and a reasonable opportunity shall be given to interested persons to make representations to the Minister with respect to the proposed regulations.

Idem

(5) Proposed regulations that are modified after publication need not be published again under subsection (4).

1993, c. 38, s. 22; 1998, c. 8, s. 5; 1999, c. 31, s. 198(F); 2004, c. 25, s. 176.

## **PART III**

### **RATES, FACILITIES AND SERVICES**

#### **Provision of Services**

##### *Meaning of “telecommunications service”*

23. For the purposes of this Part and Part IV, "telecommunications service" has the same meaning as in section 2 and includes any service that is incidental to the business of providing telecommunications services.

##### *Conditions of service*

24. The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.

##### *Telecommunications rates to be approved*

25. (1) No Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service.

##### *Filing of joint tariffs*

(2) A joint tariff agreed on by two or more Canadian carriers may be filed by any of the carriers with an attestation of the agreement of the other carriers.

##### *Form of tariffs*

(3) A tariff shall be filed and published or otherwise made available for public inspection by a Canadian carrier in the form and manner specified by the Commission and shall include any information required by the Commission to be included.

##### *Special circumstances*

(4) Notwithstanding subsection (1), the Commission may ratify the charging of a rate by a Canadian carrier otherwise than in accordance with a tariff approved by the Commission if the Commission is satisfied that the rate

(a) was charged because of an error or other circumstance that warrants the ratification; or

(b) was imposed in conformity with the laws of a province before the operations of the carrier were regulated under any Act of Parliament.

1993, c. 38, s. 25; 1999, c. 31, s. 199(F).

#### *Effective date of tariff*

26. Within forty-five business days after a tariff is filed by a Canadian carrier, the Commission shall

(a) approve the tariff, with or without amendments, or substitute or require the carrier to substitute another tariff for it;

(b) disallow the tariff; or

(c) make public written reasons why the Commission has not acted under paragraph (a) or (b) and specify the period of time within which the Commission intends to do so.

#### *Just and reasonable rates*

27. (1) Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable.

#### *Unjust discrimination*

(2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.

#### *Questions of fact*

(3) The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied with section 25, this section or section 29, or with any decision made under section 24, 25, 29, 34 or 40.

#### *Burden of proof*

(4) The burden of establishing before the Commission that any discrimination is not unjust or that any preference or disadvantage is not undue or unreasonable is on the Canadian carrier that discriminates, gives the preference or subjects the person to the disadvantage.

#### *Method*

(5) In determining whether a rate is just and reasonable, the Commission may adopt any method or technique that it considers appropriate, whether based on a carrier's return on its rate base or otherwise.

#### *Exception*

(6) Notwithstanding subsections (1) and (2), a Canadian carrier may provide telecommunications services at no charge or at a reduced rate

(a) to the carrier's directors, officers, employees or former employees; or

(b) with the approval of the Commission, to any charitable organization or disadvantaged person or other person.

#### *Transmission of broadcasts*

28. (1) The Commission shall have regard to the broadcasting policy for Canada set out in subsection 3(1) of the Broadcasting Act in determining whether any discrimination is unjust or any preference or disadvantage is undue or unreasonable in relation to any transmission of programs, as defined in subsection 2(1) of that Act, that is primarily direct to the public and made

(a) by satellite; or

(b) through the terrestrial distribution facilities of a Canadian carrier, whether alone or in conjunction with facilities owned by a broadcasting undertaking.

#### *Satellite transmission of broadcasts*

(2) Where a person who carries on a broadcasting undertaking does not agree with a Canadian carrier with respect to the allocation of satellite capacity for the transmission by the carrier of programs, as defined in subsection 2(1) of the Broadcasting Act, the Commission may allocate satellite capacity to particular broadcasting undertakings if it is satisfied that the allocation will further the implementation of the broadcasting policy for Canada set out in subsection 3(1) of that Act.

#### *Idem*

(3) Before the Commission exercises its power under subsection (2), it shall take into account the carrier's role as a telecommunications common carrier and any operational constraints identified by the carrier.

1993, c. 38, s. 28; 1999, c. 31, s. 200(F).

#### *Approval of working agreements*

29. No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting

(a) the interchange of telecommunications by means of their telecommunications facilities;

(b) the management or operation of either or both of their facilities or any other facilities with which either or both are connected; or

(c) the apportionment of rates or revenues between the carriers.

1993, c. 38, s. 29; 1999, c. 31, s. 201(F).

#### *Recovery of charges*

30. In default of payment, a rate charged by a Canadian carrier in accordance with this Act for a telecommunications service constitutes a debt due to the carrier and may be recovered in a court of competent jurisdiction.

*Limitations on liability*

31. No limitation of a Canadian carrier's liability in respect of a telecommunications service is effective unless it has been authorized or prescribed by the Commission.

*General powers*

32. The Commission may, for the purposes of this Part,

(a) approve the establishment of classes of telecommunications services and permit different rates to be charged for different classes of service;

(b) determine standards in respect of the technical aspects of telecommunications applicable to telecommunications facilities operated by or connected to those of a Canadian carrier;

(c) amend any tariff filed under section 25 or any agreement or arrangement submitted for approval under section 29;

(d) suspend or disallow any portion of a tariff, agreement or arrangement that is in its opinion inconsistent with this Part;

(e) substitute or require the Canadian carrier to substitute other provisions for those disallowed;

(f) require the Canadian carrier to file another tariff, agreement or arrangement, or another portion of it, in substitution for a suspended or disallowed tariff, agreement, arrangement or portion; and

(g) in the absence of any applicable provision in this Part, determine any matter and make any order relating to the rates, tariffs or telecommunications services of Canadian carriers.

*Integral activities of affiliates*

33. Where a Canadian carrier provides a basic telecommunications service and, in the opinion of the Commission,

(a) an activity of an affiliate of the carrier is integral to the provision of the service by the carrier, and

(b) the Commission's other powers under this Act are not sufficient for the purpose of ensuring that the rates charged by the carrier for telecommunications services are just and reasonable,

the Commission may, for that purpose, treat some or all of the earnings of the affiliate from the activity as if they were earnings of the carrier.

**Forbearance**

*Forbearance by Commission*

34. (1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

*Idem*

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

*Exception*

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

*Effect of forbearance*

(4) The Commission shall declare that sections 24, 25, 27, 29 and 31 do not apply to a Canadian carrier to the extent that those sections are inconsistent with a determination of the Commission under this section.

1993, c. 38, s. 34; 1999, c. 31, s. 202(F).

### **Order to Provide Services**

*Order to provide services*

35. (1) Where the Commission determines as a question of fact that a telecommunications service or class of services provided by an affiliate of a Canadian carrier is not subject to a degree of competition that is sufficient to ensure just and reasonable rates and prevent unjust discrimination and undue or unreasonable preference or disadvantage, the Commission may require the Canadian carrier to provide the service or class of services in any manner, to any extent and subject to any conditions determined by the Commission, if it is satisfied that it would be an effective and practical means of achieving the purposes of section 27 with respect to the service or class.

*Order to discontinue service*

(2) Where the Commission determines as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is subject to a degree of competition that is sufficient to ensure just and reasonable rates and prevent unjust discrimination and undue or unreasonable preference or disadvantage, the Commission may require the Canadian carrier to discontinue the service or class of services in the manner, to the extent and subject to the conditions determined by the Commission, if it is satisfied that it would be an effective and practical means of achieving the purposes of section 27 with respect to the service or class.

### *Meaning of “affiliate”*

(3) In subsection (1), "affiliate" , in relation to a Canadian carrier, means a person who controls the carrier, or who is controlled by the carrier or by any person who controls the carrier.

## **Content of Messages**

### *Content of messages*

36. Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public.

## **Provision of Information**

### *Information requirements*

37. (1) The Commission may require a Canadian carrier

(a) to adopt any method of identifying the costs of providing telecommunications services and to adopt any accounting method or system of accounts for the purposes of the administration of this Act; or

(b) to submit to the Commission, in periodic reports or in such other form and manner as the Commission specifies, any information that the Commission considers necessary for the administration of this Act or any special Act.

### *Exception*

(2) Where the Commission believes that a person other than a Canadian carrier is in possession of information that the Commission considers necessary for the administration of this Act or any special Act, the Commission may require that person to submit the information to the Commission in periodic reports or in such other form and manner as the Commission specifies, unless the information is a confidence of the executive council of a province.

### *Transmittal*

(3) The Commission shall, on request, provide the Minister or the Chief Statistician of Canada with any information submitted to the Commission.

1993, c. 38, s. 37; 1999, c. 31, s. 203(F).

### *Access to information*

38. Subject to section 39, the Commission shall make available for public inspection any information submitted to the Commission in the course of proceedings before it.

### *Designation of information*

39. (1) For the purposes of this section, a person who submits any of the following information to the Commission may designate it as confidential:

(a) information that is a trade secret;

(b) financial, commercial, scientific or technical information that is confidential and that is treated consistently in a confidential manner by the person who submitted it; or

(c) information the disclosure of which could reasonably be expected

(i) to result in material financial loss or gain to any person,

(ii) to prejudice the competitive position of any person, or

(iii) to affect contractual or other negotiations of any person.

#### *Information not to be disclosed*

(2) Subject to subsections (4), (5) and (6), where a person designates information as confidential and the designation is not withdrawn by that person, no person described in subsection (3) shall knowingly disclose the information, or knowingly allow it to be disclosed, to any other person in any manner that is calculated or likely to make it available for the use of any person who may benefit from the information or use the information to the detriment of any person to whose business or affairs the information relates.

#### *Persons who must not disclose information*

(3) Subsection (2) applies to

(a) any member of, or person employed by, the Commission, and

(b) in respect of information provided under subsection 37(3), the Minister, the Chief Statistician of Canada and any person employed in the federal public administration

who comes into possession of designated information while holding that office or being so employed, whether or not the person has ceased to hold that office or be so employed.

#### *Disclosure of information submitted in proceedings*

(4) Where designated information is submitted in the course of proceedings before the Commission, the Commission may disclose or require its disclosure where it determines, after considering any representations from interested persons, that the disclosure is in the public interest.

#### *Disclosure of other information*

(5) Where designated information is submitted to the Commission otherwise than in the course of proceedings before it, the Commission may disclose or require its disclosure if, after considering any representations from interested persons, it considers the information to be relevant to the determination of a matter before it and determines that the disclosure is in the public interest.

#### *Information inadmissible*

(6) Designated information that is not disclosed or required to be disclosed under this section is not admissible in evidence in any judicial proceedings except proceedings for failure to submit information required to be submitted under this Act or any special Act or for forgery, perjury or false declaration in relation to the submission of the information.

1993, c. 38, s. 39; 2003, c. 22, s. 224(E).

## **Connection of Facilities**

### *Order for connection*

40. (1) The Commission may order a Canadian carrier to connect any of the carrier's telecommunications facilities to any other telecommunications facilities.

### *Conditions of order*

(2) An order may require the connection to be made at or within such time, and subject to such conditions, if any, as to compensation or otherwise, as the Commission determines to be just and expedient.

## **Unsolicited Telecommunications**

### *Prohibition or regulation by Commission*

41. The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

### *Do not call list*

41.1 Sections 41.2 to 41.7 create a legislative framework for a national do not call list.

2005, c. 50, s. 1.

### *Administration by Commission*

41.2 The Commission may, for the purposes of section 41,

(a) administer databases or information, administrative or operational systems; and

(b) determine any matter, and make any order, with respect to the databases or the information, administrative or operational systems.

2005, c. 50, s. 1.

### *Delegation of powers*

41.3 (1) The Commission may, in writing and on specified terms, delegate to any person, including any body created by the Commission for that purpose, any of its powers under section 41.2 and any of its powers to conduct investigations to determine whether there has been a contravention of any prohibition or requirement of the Commission under section 41.

### *Decision of delegate*

(2) For the purposes of sections 62 and 63, a decision of a delegate is deemed to be a decision of the Commission.

### *Decision of Commission*

(3) For greater certainty, a delegation of powers is a decision of the Commission.

### *Revocation of delegation*

(4) The Commission may, in writing, revoke a delegation of powers. A revocation is deemed not to be a decision of the Commission.

2005, c. 50, s. 1.

### *Rates*

41.4 (1) A delegate may charge rates for exercising delegated powers.

### *Financial Administration Act does not apply*

(2) Despite the Financial Administration Act, money collected by a delegate is deemed not to be public money.

2005, c. 50, s. 1.

### *Regulation of rates and delegated powers*

41.5 The Commission may regulate the rates charged by a delegate, whether by requiring pre-approval of the rates or otherwise, and the manner in which the delegate exercises any of the delegated powers.

2005, c. 50, s. 1.

### *Report to Minister*

41.6 (1) The Commission shall, within six months after the end of each fiscal year, deliver a report to the Minister on the operation of the national do not call list in that fiscal year.

### *Content of report*

(2) The report shall set out any costs or expenditures related to the list, the number of Canadians using the list, the number of telemarketers accessing the list, any inconsistencies in the prohibitions or requirements of the Commission under section 41 that are applicable to the operation of the list, and an analysis of the effectiveness of the list.

### *Tabling of report*

(3) The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

2005, c. 50, s. 1.

### *Exemptions*

41.7 (1) An order made by the Commission that imposes a prohibition or requirement under section 41 that relates to information contained in any database or any information, administrative or operational system administered under section 41.2 for the purpose of a national do not call list does not apply in respect of a telecommunication

(a) made by or on behalf of a registered charity within the meaning of subsection 248(1) of the Income Tax Act;

(b) made to a person

(i) with whom the person making the telecommunication, or the person or organization on whose behalf the telecommunication is made, has an existing business relationship, and

(ii) who has not made a do not call request in respect of the person or organization on whose behalf the telecommunication is made;

(c) made by or on behalf of a political party that is a registered party as defined in subsection 2(1) of the Canada Elections Act or that is registered under provincial law for the purposes of a provincial or municipal election;

(d) made by or on behalf of a nomination contestant, leadership contestant or candidate of a political party described in paragraph (c) or by or on behalf of the official campaign of such a contestant or candidate;

(e) made by or on behalf of an association of members of a political party described in paragraph (c) for an electoral district;

(f) made for the sole purpose of collecting information for a survey of members of the public; or

(g) made for the sole purpose of soliciting a subscription for a newspaper of general circulation.

### *Definitions*

(2) The following definitions apply in subsection (1). "candidate"  
«*candidat* »

"candidate" means a candidate as defined in subsection 2(1) of the Canada Elections Act or a candidate whose nomination has been confirmed, for the purposes of a provincial or municipal election, by a political party that is registered under provincial law.

"existing business relationship"  
«*relation d'affaires en cours* »

"existing business relationship" means a business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from

(a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;

(b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or

(c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.

"leadership contestant"  
«*candidat a la direction* »

"leadership contestant" means a leadership contestant as defined in subsection 2(1) of the Canada Elections Act or a contestant for the leadership of a political party that is registered under provincial law.

"nomination contestant"  
«*candidat a l'investiture* »

"nomination contestant" means a nomination contestant as defined in subsection 2(1) of the Canada Elections Act or a contestant for nomination by a political party that is registered under provincial law as its candidate in a provincial or municipal election.

#### *Identification of purpose*

(3) Any person making a telecommunication referred to in subsection (1) must, at the beginning of the telecommunication, identify the purpose of the telecommunication and the person or organization on whose behalf the telecommunication is made.

#### *Distinct do not call lists*

(4) Every person or organization that, by virtue of subsection (1), is exempt from the application of an order made by the Commission that imposes a prohibition or requirement under section 41 shall maintain their own do not call list and shall ensure that no telecommunication is made on their behalf to any person who has requested that they receive no telecommunication made on behalf of that person or organization.

#### *Exception*

(5) Subsections (3) and (4) do not apply in respect of a person making a telecommunication referred to in paragraph (1)(f).  
2005, c. 50, s. 1.

## **Construction and Expropriation Powers**

#### *Works ordered by Commission*

42. (1) Subject to any contrary provision in any Act other than this Act or any special Act, the Commission may, by order, in the exercise of its powers under this Act or any special Act, require or permit any telecommunications facilities to be provided, constructed, installed, altered,

moved, operated, used, repaired or maintained or any property to be acquired or any system or method to be adopted, by any person interested in or affected by the order, and at or within such time, subject to such conditions as to compensation or otherwise and under such supervision as the Commission determines to be just and expedient.

#### *Payment of costs*

(2) The Commission may specify by whom, in what proportion and at or within what time the cost of doing anything required or permitted to be done under subsection (1) shall be paid.

#### *Definition*

43. (1) In this section and section 44, “distribution undertaking” has the same meaning as in subsection 2(1) of the Broadcasting Act.

#### *Entry on public property*

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

#### *Consent of municipality*

(3) No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.

#### *Application by carrier*

(4) Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines.

#### *Access by others*

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.

1993, c. 38, s. 43; 1999, c. 31, s. 204(F).

#### *Applications by municipalities and other authorities*

44. On application by a municipality or other public authority, the Commission may

(a) order a Canadian carrier or distribution undertaking, subject to any conditions that the Commission determines, to bury or alter the route of any transmission line situated or proposed to be situated within the jurisdiction of the municipality or public authority; or

(b) prohibit the construction, maintenance or operation by a Canadian carrier or distribution undertaking of any such transmission line except as directed by the Commission.

#### *Drainage and utilities*

45. On application by a municipality or other public authority, or by an owner of land, the Commission may authorize the construction of drainage works or the laying of utility pipes on, over, under or along a transmission line of a Canadian carrier or any lands used for the purposes of a transmission line, subject to any conditions that the Commission determines.

1993, c. 38, s. 45; 1999, c. 31, s. 205(F).

#### *Expropriation by carrier*

46. (1) If, in the opinion of a Canadian carrier, the taking or acquisition by the carrier of any land, an interest or, in the Province of Quebec, a right in any land without the consent of the owner is required for the purpose of providing telecommunications services to the public, the carrier may, with the approval of the Commission, so advise the appropriate Minister in relation to Part I of the Expropriation Act.

#### *Copies of opinion*

(2) The Commission shall provide a copy of its approval to the Minister, to the appropriate Minister in relation to Part I of the Expropriation Act and to each owner of, or person having an interest or right in, the land.

#### *Interpretation*

(3) For the purposes of the Expropriation Act, if the appropriate Minister advised under subsection (1) is of the opinion that the land or the interest or right in land is required for the purpose of providing telecommunications services to the public,

(a) the land or the interest or right in land is deemed to be, in the opinion of that Minister, required for a public work or other public purpose;

(b) a reference to the Crown in that Act is deemed to be a reference to the Canadian carrier; and

(c) the carrier is liable to pay any amounts required to be paid under subsection 10(9) and sections 25, 29 and 36 of that Act in respect of the land or the interest or right in land.

#### *Liability to Crown for expenses*

(4) The expenses incurred in carrying out any function of the Attorney General of Canada under the Expropriation Act in relation to any land or any interest or right in land referred to in subsection (3) constitute a debt due to Her Majesty in right of Canada by the Canadian carrier and are recoverable in a court of competent jurisdiction.

1993, c. 38, s. 46; 2004, c. 25, s. 177.

### *Administration by Commission*

46.1 The Commission may, if it determines that to do so would facilitate the interoperation of Canadian telecommunications networks,

(a) administer

(i) databases or information, administrative or operational systems related to the functioning of telecommunications networks, or

(ii) numbering resources used in the functioning of telecommunications networks, including the portion of the North American Numbering Plan resources that relates to Canadian telecommunications networks; and

(b) determine any matter and make any order with respect to the databases, information, administrative or operational systems or numbering resources.

1998, c. 8, s. 6.

### *Delegation of powers*

46.2 (1) The Commission may, in writing and on specified terms, delegate any of its powers under section 46.1 to any person, including any body created by the Commission for that purpose.

### *Decision of delegate*

(2) For the purposes of sections 62 and 63, a decision of a delegate is deemed to be a decision of the Commission.

### *Decision of Commission*

(3) For greater certainty, a delegation of powers is a decision of the Commission.

### *Revocation of delegation*

(4) The Commission may, in writing, revoke a delegation of powers. A revocation is deemed not to be a decision of the Commission.

1998, c. 8, s. 6.

### *Rates*

46.3 (1) Subject to subsection (2), a delegate may charge rates for exercising delegated powers.

### *Regulation of rates*

(2) The Commission may regulate the rates charged by a delegate, whether by requiring pre-approval of the rates or otherwise.

### *Financial Administration Act does not apply*

(3) Notwithstanding the Financial Administration Act, money collected by a delegate is deemed not to be public money.

1998, c. 8, s. 6.

*Regulation of conditions and rates*

46.4 The Commission may regulate

(a) the manner in which any person provides services relating to any of the matters referred to in paragraph 46.1(a); and

(b) the rates, whether by requiring pre-approval of the rates or otherwise, charged by the person.

1998, c. 8, s. 6.

*Contribution to fund*

46.5 (1) The Commission may require any telecommunications service provider to contribute, subject to any conditions that the Commission may set, to a fund to support continuing access by Canadians to basic telecommunications services.

*Designation of administrator*

(2) The Commission must designate a person to administer the fund.

*Regulation of administration and rates*

(3) The Commission may regulate

(a) the manner in which the administrator administers the fund; and

(b) the rates, whether by requiring pre-approval of the rates or otherwise, charged by the administrator for administering the fund.

1998, c. 8, s. 6.

## **PART IV**

### **ADMINISTRATION**

#### **Exercise of Powers**

*Commission subject to orders and standards*

47. The Commission shall exercise its powers and perform its duties under this Act and any special Act

(a) with a view to implementing the Canadian telecommunications policy objectives and ensuring that Canadian carriers provide telecommunications services and charge rates in accordance with section 27; and

(b) in accordance with any orders made by the Governor in Council under section 8 or any standards prescribed by the Minister under section 15.

#### *Inquiries and determinations*

48. (1) The Commission may, on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II, except in relation to international submarine cables, Part III or this Part or under any special Act, and the Commission shall inquire into any matter on which it is required to report or take action under section 14.

#### *Interested persons*

(2) The decision of the Commission that a person is or is not an interested person is binding and conclusive.

#### *Quorum*

49. For the purposes of this Act, a quorum of the Commission consists of two members, but in uncontested matters a quorum consists of one member.

#### *Extension of time*

50. The Commission may extend the period, whether fixed by regulation or otherwise, for doing anything required to be done in proceedings before it or under any of its decisions.

#### *Mandatory and restraining orders*

51. The Commission may order a person, at or within any time and subject to any conditions that it determines, to do anything the person is required to do under this Act or any special Act, and may forbid a person to do anything that the person is prohibited from doing under this Act or any special Act.

#### *Questions of law and fact*

52. (1) The Commission may, in exercising its powers and performing its duties under this Act or any special Act, determine any question of law or of fact, and its determination on a question of fact is binding and conclusive.

#### *Factual findings of court*

(2) In determining a question of fact, the Commission is not bound by the finding or judgment of any court, but the finding or judgment of a court is admissible in proceedings of the Commission.

#### *Pending proceedings*

(3) The power of the Commission to hear and determine a question of fact is not affected by proceedings pending before any court in which the question is in issue.

#### *Counsel assigned by Minister of Justice*

53. Where an issue of particular importance affecting the public interest arises, or may arise, in the course of proceedings before the Commission, the Minister of Justice may, at the request of the Commission or of the Minister's own motion, instruct counsel to intervene in the proceedings with respect to the issue.

#### *In camera hearings*

54. A hearing or a portion of a hearing before the Commission may, on the request of any party to the hearing, or on the Commission's own motion, be held in camera if that party establishes to the satisfaction of the Commission, or the Commission determines, that the circumstances of the case so require.

#### *Judicial powers*

55. The Commission has the powers of a superior court with respect to

- (a) the attendance and examination of witnesses;
- (b) the production and examination of any document, information or thing;
- (c) the enforcement of its decisions;
- (d) the entry on and inspection of property; and
- (e) the doing of anything else necessary for the exercise of its powers and the performance of its duties.

#### *Award of costs*

56. (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

#### *Payment of costs*

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

#### *Rules, orders and regulations*

57. The Commission may make rules, orders and regulations respecting any matter or thing within the jurisdiction of the Commission under this Act or any special Act.

### **Guidelines and Advice**

#### *Guidelines*

58. The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act or any special Act, but the guidelines and statements are not binding on the Commission.

#### *Advice*

59. (1) Where a person proposes to provide a telecommunications service that would utilize telecommunications services obtained from a Canadian carrier, the Commission may, on application by the person or the carrier, advise the applicant whether and under what conditions the carrier is obliged or entitled to provide telecommunications services for the purpose of that utilization under the applicable decisions of the Commission and tariffs of the carrier, but the advice is not binding on the Commission.

#### *Saving*

(2) This section does not affect the power of the Commission to advise any person with respect to any other matter within its jurisdiction.

### **Decisions of Commission**

#### *Partial or additional relief*

60. The Commission may grant the whole or any portion of the relief applied for in any case, and may grant any other relief in addition to or in substitution for the relief applied for as if the application had been for that other relief.

#### *Conditional decisions*

61. (1) The Commission may, in any decision, provide that the whole or any portion of the decision shall come into force on, or remain in force until, a specified day, the occurrence of a specified event, the fulfilment of a specified condition, or the performance to the satisfaction of the Commission, or of a person named by it, of a requirement imposed on any interested person.

#### *Interim decisions*

(2) The Commission may make an interim decision and may make its final decision effective from the day on which the interim decision came into effect.

#### *Ex parte decisions*

(3) The Commission may make an ex parte decision where it considers that the circumstances of the case justify it.

#### *Review of decisions*

62. The Commission may, on application or on its own motion, review and rescind or vary any decision made by it or re-hear a matter before rendering a decision.

#### *Enforcement in Federal Court*

63. (1) A decision of the Commission may be made an order of the Federal Court or of a superior court of a province and may be enforced in the same manner as an order of that court as if it had been an order of that court on the date of the decision.

#### *Procedure*

(2) A decision of the Commission may be made an order of a court in accordance with the usual practice and procedure of the court in such matters, if any, or by the filing with the registrar of the court of a copy of the decision certified by the secretary to the Commission.

*Effect of revocation or amendment*

(3) Where a decision of the Commission that has been made an order of a court is rescinded or varied by a subsequent decision of the Commission, the order of the court is vacated and the decision of the Commission as varied may be made an order of the court in accordance with subsection (2).

*Saving*

(4) The Commission may enforce any of its decisions whether or not the decision has been made an order of a court.

## **Appeals**

*Appeal to Federal Court of Appeal*

64. (1) An appeal from a decision of the Commission on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

*Application for leave*

(2) Leave to appeal shall be applied for within thirty days after the date of the decision appealed from or within such further time as a judge of the Court grants in exceptional circumstances, and the costs of the application are in the discretion of the Court.

*Notice*

(3) Notice of an application for leave to appeal shall be served on the Commission and on each party to the proceedings appealed from.

*Time limit for appeal*

(4) An appeal shall be brought within sixty days after the day on which leave to appeal is granted.

*Findings of fact*

(5) On an appeal, the Court may draw any inference that is not inconsistent with the findings of fact made by the Commission and that is necessary for determining a question of law or jurisdiction.

*Argument by Commission*

(6) The Commission is entitled to be heard on an application for leave to appeal and at any stage of an appeal, but costs may not be awarded against it or any of its members.  
1993, c. 38, s. 64; 1999, c. 31, s. 206(F).

## **Evidence**

### *Judicial notice*

65. A decision of the Commission or a tariff approved by the Commission that is published in the Canada Gazette by or with leave of the Commission shall be judicially noticed.

### *Business documents*

66. (1) In proceedings under this Act, a document purporting to have been issued by a Canadian carrier or by an agent or a mandatary of a Canadian carrier is admissible in evidence against the carrier without proof of the issuance of the document by the carrier or the authenticity of its contents.

### *Ministerial or Commission documents*

(2) A document appearing to be signed by the Minister, the Chairperson of the Commission or the secretary to the Commission is evidence of the official character of the person appearing to have signed it and, in the case of the Chairperson or secretary, of its issuance by the Commission, and if the document appears to be a copy of a decision or report, it is evidence of its contents.

### *Copies*

(3) A copy of a document submitted to the Commission and appearing to be certified as a true copy by the secretary to the Commission is, without proof of the secretary's signature, evidence of the original, of its submission to the Commission, of the date of its submission and of the signature of any person appearing to have signed it.

### *Certificate*

(4) A certificate appearing to be signed by the secretary to the Commission and bearing the Commission's seal is evidence of its contents without proof of the signature.

1993, c. 38, s. 66; 2001, c. 34, s. 32(E); 2004, c. 25, s. 178.

## **Regulations**

### *Regulations*

67. (1) The Commission may make regulations

(a) prescribing standards governing the height of transmission lines of Canadian carriers, not inconsistent with standards prescribed under any other Act of Parliament;

(b) establishing rules respecting its practice and procedure;

(b.1) prescribing classes of international telecommunications service licences;

(b.2) requiring international telecommunications service licensees to publish their licences or otherwise make them available for public inspection;

(c) establishing the criteria for the awarding of costs; and

(d) generally for carrying out the purposes and provisions of this Act or any special Act.

### *Application*

(2) Regulations made by the Commission may be of general application or applicable in respect of a particular case or class of cases.

### *Incorporation by reference*

(3) Regulations made by the Commission incorporating any standard or enactment by reference may incorporate it as amended from time to time.

1993, c. 38, s. 67; 1998, c. 8, s. 7.

### *Regulations prescribing fees*

68. (1) The Commission may, with the approval of the Treasury Board, make regulations prescribing fees, and respecting their calculation and payment, for the purpose of recovering all or a portion of the costs that the Commission determines to be attributable to its responsibilities under this Act or any special Act.

### *Debt due to Her Majesty*

(2) Fees required to be paid under this section constitute a debt due to Her Majesty in right of Canada and may be recovered in a court of competent jurisdiction.

### *Pre-publication of regulations*

69. (1) Any regulations proposed to be made under section 67 or 68 shall be published in the Canada Gazette at least sixty days before their proposed effective date, and a reasonable opportunity shall be given to interested persons to make representations to the Commission with respect to the proposed regulations.

### *Idem*

(2) Proposed regulations that are modified after publication need not be published again under subsection (1).

## **PART IV.1**

### **TELECOMMUNICATIONS APPARATUS**

#### **Application**

### *Application*

69.1 This Part applies to telecommunications apparatus that can be

- (a) connected to telecommunications networks of Canadian carriers; and
- (b) used by a telecommunications service subscriber at their premises.

1998, c. 8, s. 8.

## **Prohibitions**

### *Technical acceptance certificate*

69.2 (1) No person shall distribute, lease, offer for sale, sell or import any telecommunications apparatus for which a technical acceptance certificate is required under this Act, otherwise than in accordance with such a certificate.

### *Specifications and markings*

(2) No person shall distribute, lease, offer for sale, sell or import any telecommunications apparatus for which technical specifications or markings are required under paragraph 69.4(1)(a), unless the apparatus complies with those requirements.

1998, c. 8, s. 8.

## **Minister's Powers**

### *Minister's powers*

69.3 (1) Subject to any regulations made under section 69.4, the Minister may, taking into account all matters that the Minister considers relevant to further the Canadian telecommunications policy objectives,

- (a) issue technical acceptance certificates in respect of telecommunications apparatus and fix the duration and conditions of any such certificate;
- (b) change the duration and amend the conditions of certificates;
- (c) make available to the public any information set out in certificates;
- (d) establish technical specifications and markings in relation to telecommunications apparatus or any class of telecommunications apparatus;
- (e) test telecommunications apparatus for compliance with technical specifications and markings required under this Part;
- (f) require holders of, and applicants for, certificates to disclose to the Minister any information that the Minister considers appropriate respecting the present and proposed use of the telecommunications apparatus in question;
- (g) require holders of certificates to inform the Minister of any material changes in information disclosed under paragraph (f);
- (h) appoint inspectors for the purposes of this Part; and
- (i) do any other thing necessary for the effective administration of this Part.

### *Delegation of powers*

(2) The Minister may authorize any person to perform such powers on behalf of the Minister under paragraph (1)(a) as the Minister may determine and subject to the conditions that the Minister may fix.

*Suspension or revocation of certificate*

(3) The Minister may suspend or revoke a certificate

(a) with the consent of the holder of the certificate;

(b) after giving written notice to the holder and giving the holder a reasonable opportunity to make representations to the Minister with respect to the notice, if the Minister is satisfied that

(i) the holder has contravened this Part, the regulations or the conditions of the certificate, or

(ii) the certificate was obtained through misrepresentation; or

(c) on giving written notice of suspension or revocation to the holder, without having to give the holder an opportunity to make representations to the Minister with respect to the notice, if the holder has failed to comply with a request to pay fees or interest due.

1998, c. 8, s. 8.

**Powers of Governor in Council and Others**

*Regulations*

69.4 (1) The Governor in Council may make regulations

(a) respecting requirements for technical specifications and markings in relation to telecommunications apparatus or any class of telecommunications apparatus;

(b) prescribing telecommunications apparatus, or classes of telecommunications apparatus, in respect of which a technical acceptance certificate is required;

(c) respecting the inspection, testing and approval of telecommunications apparatus in relation to technical acceptance certificates;

(d) prescribing the form of technical acceptance certificates or markings, or any class of certificates or markings;

(e) prescribing the procedure governing applications for technical acceptance certificates, or any class of certificates, and the issuing of certificates by the Minister;

(f) prescribing the conditions of technical acceptance certificates, including conditions as to the services that may be provided by the holder of a certificate;

(g) prescribing the eligibility and qualifications of persons who may be appointed as inspectors, and the duties of inspectors;

(h) for giving effect to international agreements, conventions or treaties respecting telecommunications apparatus to which Canada is a party;

- (i) prescribing fees for technical acceptance certificates, applications for certificates and examinations or testing in relation to certificates, and respecting interest payable on unpaid fees;
- (j) prescribing anything that by this Part is to be prescribed; and
- (k) generally for carrying out the purposes and provisions of this Part.

*Incorporation by reference*

(2) For greater certainty, a regulation made under subsection (1) incorporating by reference a classification, standard, procedure or other specification may incorporate the classification, standard, procedure or specification as amended from time to time.

1998, c. 8, s. 8.

*Powers of inspectors*

69.5 (1) Subject to subsection (2), an inspector appointed under paragraph 69.3(1)(h) may, at any reasonable time, for the purpose of enforcing this Part,

- (a) enter any place of business that the inspector believes on reasonable grounds is being used to distribute, lease, offer for sale, sell or import any telecommunications apparatus referred to in section 69.2;
- (b) examine any telecommunications apparatus found in a place referred to in paragraph (a); and
- (c) examine any logs, books, reports, test data, records, shipping bills, bills of lading or other documents or papers found in a place referred to in paragraph (a) that the inspector believes on reasonable grounds contain information relevant to the enforcement of this Part, and make copies of, or take extracts from, them.

*Assistance to inspectors*

(2) The owner or person in charge of a place entered by an inspector shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector's duties under this Part, and shall give the inspector any information that the inspector reasonably requests.

Obstruction, false information

- (3) When an inspector is carrying out duties under this Part, no person shall
  - (a) resist or wilfully obstruct the inspector; or
  - (b) knowingly make a false or misleading statement, either orally or in writing, to the inspector.

1998, c. 8, s. 8.

**PART V**

**INVESTIGATION AND ENFORCEMENT**

**Inquiries**

### *Appointment by Commission*

70. (1) The Commission may appoint any person to inquire into and report to the Commission on any matter

(a) pending before the Commission or within the Commission's jurisdiction under this Act or any special Act; or

(b) on which the Commission is required to report under section 14.

### *Appointment by Minister*

(2) The Minister may, with the approval of the Governor in Council, appoint any person to inquire into and report to the Minister on any matter in respect of which this Act or any special Act applies, and a copy of the report shall be sent to the Commission.

### *Powers*

(3) For the purposes of an inquiry, a person appointed under this section has all the powers of a Commissioner under Part I of the Inquiries Act and of an inspector under subsection 71(4).

### *Disclosure*

(4) The rules in section 39 respecting the designation and disclosure of information apply in respect of any information submitted to a person, or obtained in proceedings before a person, appointed under this section as if that person were a member of the Commission exercising the powers of the Commission.

### *In camera hearings*

(5) The rules in section 54 respecting in camera hearings apply in hearings held before a person appointed under this section.

## **Inspection**

### *Designation of inspectors*

71. (1) The Commission may designate any qualified person as an inspector for the purpose of verifying compliance with the provisions of this Act or any special Act for which the Commission is responsible and with the decisions of the Commission under this Act.

### *Idem*

(2) The Minister may designate any qualified person as an inspector for the purpose of verifying compliance with the provisions of this Act for which the Minister is responsible.

### *Certificate*

(3) An inspector shall be provided with a certificate of designation, which certificate the inspector shall present at the request of any person appearing to be in charge of any place entered by the inspector.

### *Powers of inspectors*

- (4) An inspector may, for the purposes for which the inspector was designated an inspector,
- (a) subject to subsection (5), enter and inspect, at any reasonable time, any place owned by or under the control of any Canadian carrier in which the inspector believes on reasonable grounds there is any document, information or thing relevant to the enforcement of this Act or any special Act, and examine the document, information or thing or remove it for examination or reproduction;
  - (b) make use of or cause to be made use of any data processing system at the place to examine any data contained in or available to the system;
  - (c) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and take the print-out or other output for examination or copying; and
  - (d) make use of any copying equipment or means of communication located at the place.

### *Warrant required to enter dwelling-place*

(5) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (6).

Authority to issue warrant

(6) Where on ex parte application a justice, as defined in section 2 of the Criminal Code, is satisfied by information on oath

(a) that a dwelling-place is a place described in paragraph (4)(a),

(b) that entry to the dwelling-place is necessary for the enforcement of this Act or any special Act, and

(c) that entry has been refused, there are reasonable grounds for believing that entry will be refused, or consent to entry cannot be obtained from the occupant,

the justice may issue a warrant authorizing an inspector named in the warrant to enter the dwelling-place, subject to any conditions specified in the warrant.

### *Use of force*

(7) An inspector executing a warrant issued under subsection (6) shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

1993, c. 38, s. 71; 1999, c. 31, s. 207(F).

## **Civil Liability**

### *Damages*

72. (1) Subject to any limitation of liability imposed in accordance with this or any other Act, a person who has sustained loss or damage as a result of any act or omission that is contrary to this Act or any special Act or a decision or regulation made under either of them may, in a court of

competent jurisdiction, sue for and recover an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.

*Limitation*

(2) An action may not be brought in respect of any loss or damage referred to in subsection (1) more than two years after the day on which the act or omission occurred.

*Exception*

(3) Nothing in subsection (1) or (2) applies to any action for breach of a contract to provide telecommunications services or any action for damages in relation to a rate charged by a Canadian carrier.

1993, c. 38, s. 72; 2001, c. 4, s. 122(F).

### **Administrative Monetary Penalties**

*Commission of violation*

72.01 Every contravention of a prohibition or requirement of the Commission under section 41 constitutes a violation and the person who commits the violation is liable

(a) in the case of an individual, to an administrative monetary penalty of up to \$1,500; or

(b) in the case of a corporation, to an administrative monetary penalty of up to \$15,000.

2005, c. 50, s. 2.

*Vicarious liability — acts of employees, agents and mandataries*

72.02 A person is liable for a violation that is committed by an employee, or an agent or mandatary, of the person acting in the course of the employee's employment or the scope of the agent's or mandatary's authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against in accordance with this Act.

2005, c. 50, s. 2.

*Continuing violation*

72.03 A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

2005, c. 50, s. 2.

*Power of Commission re notices of violation*

72.04 (1) The Commission may

(a) designate persons, or classes of persons, who are authorized to issue notices of violation; and

(b) establish, in respect of each violation, a short-form description to be used in notices of violation.

#### *Certificate*

(2) A person designated under paragraph (1)(a) shall be provided with a certificate of designation, which certificate must be presented at the request of any person appearing to be in charge of any place entered by the designated person.  
2005, c. 50, s. 2.

#### *Information requirement*

72.05 A person authorized to issue notices of violation who believes that a person is in possession of information that the authorized person considers necessary for the administration of section 41 may require that person to submit the information to the authorized person in periodic reports or in any other form and manner that the authorized person specifies.

2005, c. 50, s. 2.

#### *Inspections*

72.06 (1) A person authorized to issue notices of violation may

(a) subject to subsection (2), enter and inspect, at any reasonable time, any place in which he or she believes on reasonable grounds there is any document, information or thing relevant to the enforcement of section 41, and examine the document, information or thing or remove it for examination or reproduction;

(b) make use of or cause to be made use of any data processing system at the place to examine any data contained in or available to the system;

(c) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and take the print-out or other output for examination or copying; and

(d) make use of any copying equipment or means of communication located at the place.

#### *Warrant required to enter dwelling-place*

(2) A person authorized to issue notices of violation may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (3).

#### *Authority to issue warrant*

(3) On ex parte application, a justice, as defined in section 2 of the Criminal Code, may issue a warrant authorizing a person authorized to issue notices of violation and who is named in the warrant to enter and inspect a dwelling-place, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath

(a) that the dwelling-place is a place described in paragraph (1)(a);

(b) that entry to the dwelling-place is necessary for the enforcement of section 41; and

(c) that entry has been refused, there are reasonable grounds for believing that entry will be refused, or consent to entry cannot be obtained from the occupant.

#### *Use of force*

(4) A person executing a warrant issued under subsection (3) shall not use force unless he or she is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

2005, c. 50, s. 2.

#### *Notice of violation*

72.07 (1) A person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

#### *Contents of notice*

(2) The notice of violation must name the person believed to have committed a violation, identify the violation and set out

(a) the penalty for the violation as set out in section 72.01;

(b) the right of the person, within 30 days after the notice is served, or within any longer period that the Commission specifies, to pay the penalty or to make representations to the Commission with respect to the violation, and the manner for doing so; and

(c) the fact that, if the person does not pay the penalty or make representations in accordance with the notice, the person will be deemed to have committed the violation and the Commission may impose the penalty.

2005, c. 50, s. 2.

#### *Payment*

72.08 (1) If the person pays the penalty set out in the notice of violation, the person is deemed to have committed the violation and proceedings in respect of it are ended.

#### *Representations to Commission*

(2) If the person makes representations in accordance with the notice, the Commission must decide, on a balance of probabilities, whether the person committed the violation and, if it so decides, it may impose the penalty.

#### *Failure to pay or make representations*

(3) A person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Commission may impose the penalty.

#### *Copy of decision and notice of rights*

(4) The Commission must cause a copy of any decision made under subsection (2) or (3) to be issued and served on the person together with a notice of the person's right to apply for a review under section 62 and to appeal under section 64.

2005, c. 50, s. 2.

#### *Debts to Her Majesty*

72.09 (1) An administrative monetary penalty constitutes a debt due to Her Majesty in right of Canada that may be recovered as such in the Federal Court.

#### *Time limit*

(2) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the debt became payable.

#### *Proceeds payable to Receiver General*

(3) An administrative monetary penalty paid or recovered in relation to a violation is payable to and shall be remitted to the Receiver General.

#### *Certificate of default*

(4) The unpaid amount of any debt referred to in subsection (1) may be certified by the Commission.

#### *Registration in Federal Court*

(5) Registration in the Federal Court of a certificate made under subsection (4) has the same effect as a judgment of that Court for a debt of the amount specified in the certificate and all related registration costs.

2005, c. 50, s. 2.

#### *Defences*

72.1 (1) It is a defence for a person in a proceeding in relation to a violation to establish that the person exercised due diligence to prevent the violation.

#### *Common law principles*

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence in relation to a contravention of a prohibition or requirement of the Commission under section 41 applies in respect of a violation to the extent that the rule or principle is not inconsistent with this Act.

2005, c. 50, s. 2.

#### *Evidence*

72.11 In a proceeding in respect of a violation, a notice purporting to be served under subsection 72.07(1) or a copy of a decision purported to be served under subsection 72.08(4) is admissible

in evidence without proof of the signature or official character of the person appearing to have signed it.

2005, c. 50, s. 2.

#### *Time limit*

72.12 (1) No proceedings in respect of a violation may be commenced later than two years after the day on which the subject-matter of the proceedings became known to the Commission.

#### *Certificate of secretary to the Commission*

(2) A document appearing to have been issued by the secretary to the Commission, certifying the day on which the subject-matter of any proceedings became known to the Commission, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

2005, c. 50, s. 2.

#### *Publication*

72.13 The Commission may make public the nature of a violation, the name of the person who committed it, and the amount of the administrative monetary penalty.

2005, c. 50, s. 2.

#### *How act or omission may be proceeded with*

72.14 If a contravention of a prohibition or a requirement of the Commission under section 41 can be proceeded with either as a violation or as an offence, proceeding in one manner precludes proceeding in the other.

2005, c. 50, s. 2.

#### *Section 12 does not apply*

72.15 Section 12 does not apply in respect of any decision of the Commission under subsection 72.08(2) or (3).

2005, c. 50, s. 2.

## **Offences**

#### *Offences*

73. (1) Every person who contravenes subsection 16(4) or 16.1(1) or (2) or section 17 is guilty of an offence punishable on summary conviction and liable

(a) in the case of an individual, to a fine not exceeding fifty thousand dollars for a first offence, or one hundred thousand dollars for a subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding five hundred thousand dollars for a first offence, or one million dollars for a subsequent offence.

*Idem*

(2) Every person who

(a) contravenes section 25, subsection 27(1) or (2) or section 69.2,

(b) contravenes any condition referred to in section 9 or 24 or subsection 34(1) or (2),

(c) contravenes any prohibition or requirement of the Commission under section 41, or

(d) knowingly makes a material misrepresentation of fact or omits to state a material fact to the Minister, the Commission, a person appointed under section 70 or an inspector appointed under paragraph 69.3(1)(h) or section 71

is guilty of an offence punishable on summary conviction and liable, in the case of an individual, to a fine not exceeding ten thousand dollars for a first offence or twenty-five thousand dollars for a subsequent offence, and in the case of a corporation, to a fine not exceeding one hundred thousand dollars for a first offence or two hundred and fifty thousand dollars for a subsequent offence.

*Idem*

(3) Every person who

(a) contravenes any other provision of this Act or any special Act or any regulation or decision made under this Act, or

(b) fails to do anything required or does anything prohibited under a provision, regulation or decision referred to in paragraph (a)

is guilty of an offence punishable on summary conviction and liable, in the case of an individual, to a fine not exceeding five thousand dollars for a first offence or ten thousand dollars for a subsequent offence, and in the case of a corporation, to a fine not exceeding fifty thousand dollars for a first offence or one hundred thousand dollars for a subsequent offence.

*Consent of Minister required*

(4) A prosecution may not be commenced under this section in respect of a contravention of any provision of Part I, of section 17, of Part IV.1 or of any regulations made under subsection 22(2) or section 69.4, or in respect of a material misrepresentation of fact or an omission to state a material fact to the Minister, without the consent of the Minister.

*Consent of Commission required*

(5) A prosecution may not be commenced in respect of any other offence without the consent of the Commission.

*Time limit*

(6) A prosecution may not be commenced under this Act later than two years after the occurrence of the act or omission that is the subject-matter of the proceedings.

### *Injunctions*

(7) If a court of competent jurisdiction is satisfied, on application by the Minister, that a contravention of section 69.2 is being or is likely to be committed, the court may grant an injunction, subject to any conditions that the court considers appropriate, ordering any person to cease or refrain from any activity related to that offence.

### *Federal Court*

(8) For the purposes of subsection (7), the Federal Court is a court of competent jurisdiction. 1993, c. 38, s. 73; 1998, c. 8, s. 9; 2002, c. 17, s. 30.

### *Continuing offence*

74. Where an offence under section 73 is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

## **Forfeiture**

### *Forfeiture of telecommunications apparatus*

74.1 (1) In the case of a conviction for an offence arising out of a contravention of subsection 69.2(1) or (2), any telecommunications apparatus in relation to which or by means of which the offence was committed may be forfeited to Her Majesty in right of Canada by order of the Minister for the disposition, subject to subsections (2) to (6), that the Minister may direct.

### *Notice of forfeiture*

(2) If apparatus is ordered to be forfeited under subsection (1), the Minister shall cause a notice of the forfeiture to be published in the Canada Gazette.

### *Application by person claiming interest or right*

(3) Any person, other than a party to the proceedings that resulted in a forfeiture under subsection (1), who claims an interest or right in the apparatus as owner, mortgagee, hypothecary creditor, lien holder, holder of a prior claim or holder of any like interest or right may, within ninety days after the making of the order of forfeiture, apply to any superior court of competent jurisdiction for an order under subsection (6), in which case the court shall fix a day for the hearing of the application.

### *Notice*

(4) The court may find the application abandoned if the applicant does not, at least thirty days before the day fixed for the hearing of the application, serve a notice of the application and of the hearing on the Minister and on all other persons claiming an interest or right in the apparatus that is the subject-matter of the application as owner, mortgagee, hypothecary creditor, lien holder, holder of a prior claim or holder of any like interest or right of whom the applicant has knowledge.

### *Notice of intervention*

(5) Every person, other than the Minister, who is served with a notice under subsection (4) must, in order to appear at the hearing of the application, file an appropriate notice of intervention in the record of the court and serve a copy of that notice on the Minister and on the applicant at least ten days before the day fixed for the hearing or any shorter period that the court may allow.

*Order declaring nature and extent of interests or rights*

(6) An applicant or intervener is entitled to an order declaring that their interest or right is not affected by the forfeiture and declaring the nature and extent of their interest or right and the ranking of their interest or right in relation to other interests or rights recognized under this subsection, and the court may, in addition, order that the apparatus to which the interests or rights relate be delivered to one or more of the persons found to have an interest or right in the apparatus, or that an amount equal to the value of each of the interests or rights so declared be paid to the persons found to have those interests or rights, if, on the hearing of an application under this section, the court is satisfied that the applicant or intervener

(a) is innocent of any complicity and collusion in any conduct that caused the apparatus to be subject to forfeiture; and

(b) in the case of owners, exercised all reasonable care in respect of the persons permitted to obtain possession and use of the apparatus to satisfy themselves that it was not likely to be used in the commission of an offence arising out of a contravention of section 69.2.

*Liability for costs*

(7) Any persons convicted in respect of the forfeited apparatus are jointly and severally, or solidarily, liable for all the costs of inspection, seizure, forfeiture or disposition incurred by Her Majesty that exceed any proceeds of the disposition of the apparatus that have been forfeited to Her Majesty under this section.

1998, c. 8, s. 10; 2001, c. 4, s. 123; 2004, c. 25, s. 179.

**PART VI  
TRANSITIONAL PROVISIONS**

*Directive for transitional period*

75. (1) The Governor in Council may, after consultation with the Commission, issue to the Commission directives respecting the regulation, during any period ending five years after this section comes into force, of a Canadian carrier whose telecommunications operations were not, immediately before this section comes into force, being regulated pursuant to any Act of Parliament, but not more than one such directive may be issued in respect of any one Canadian carrier.

*Implementation by Commission*

(2) The Commission shall carry out the directives, subject to and in accordance with the provisions of this Act.

*Tabling in Parliament*

(3) The Minister shall have a copy of each directive laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the directive is issued.

*Deemed approval*

76. (1) An agreement or arrangement referred to in section 29 or a limitation of liability referred to in section 31 that was entered into or imposed, respectively, by a Canadian carrier in conformity with provincial law while the carrier's operations were not being regulated under an Act of Parliament, and that is in effect on the coming into force of this section, shall be deemed to have been approved pursuant to section 29 or 31.

*Deemed permission*

(2) A transmission line that was constructed by a Canadian carrier on, over, under or along a highway or other public place while the carrier's operations were not being regulated under an Act of Parliament shall be deemed to have been constructed with the consent referred to in subsection 43(3).

1993, c. 38, s. 76; 1999, c. 31, s. 208(F).

**PART VII**

**RELATED AMENDMENTS, REPEALS, APPLICATION OF CERTAIN PROVISIONS  
AND COMING INTO FORCE**

**Related Amendments**

77. to 129. [Amendments]

**Repeals**

130. and 131. [Repeals]

**Application of Certain Provisions**

*Agent of Her Majesty in right of Manitoba*

132. Where a day is fixed for the coming into force of section 3, 88, 89 or 90, that section does not apply in relation to any Canadian carrier that is an agent of Her Majesty in right of the Province of Manitoba until December 31, 1993, or such earlier day as is fixed by the Governor in Council at the written request of the Government of Manitoba.

*Agent of Her Majesty in right of Saskatchewan*

\*133. Where a day is fixed for the coming into force of section 3, 88, 89 or 90, that section does not apply in relation to any Canadian carrier that is an agent of Her Majesty in right of the Province of Saskatchewan until a day to be fixed for that purpose by the Governor in Council on the expiration of five years after that section comes into force, or such earlier day as is fixed by the Governor in Council at the written request of the Government of Saskatchewan.

\* [Note: Sections 3, 88, 89 and 90 shall apply in relation to any Canadian carrier that is an agent of Her Majesty in right of the Province of Saskatchewan as of June 30, 2000, see SI/98-109.]

**Coming into Force**

*Coming into force*

\*134. This Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

\* [Note: Act in force October 25, 1993, see SI/93-101.]

**RELATED PROVISIONS**

-- 1995, c. 1, s. 62(4):

*Idem*

(4) Every reference to the Minister of Communications in any order, regulation or other instrument made under the Radiocommunication Act or the Telecommunications Act shall, unless the context otherwise requires, be read as a reference to the Minister of Industry.

-- 2005, c. 50, s. 2.1:

*Review*

2.1 Three years after this Act comes into force, a committee of the House of Commons, of the Senate or of both Houses of Parliament is to be designated or established for the purpose of reviewing the administration and operation of the provisions enacted by this Act.